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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050154
Party	Defendant Roust Trading Limited
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Submission	Motion to Suspend for Civil Action
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Signature	/Carrie L. Kiedrowski/
Date	01/07/2009
Attachments	Roust Trading Limited's Motion for Suspension of Proceedings - Cancellation No. 92050154.PDF ( 41 pages )(1367099 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SPIRITS INTERNATIONAL B.V. and S.P.I.  
SPIRITS (CYPRUS) LIMITED,

Petitioners,

v.

ROUST TRADING LIMITED,

Respondent.

Cancellation No. 92050154  
Registration No. 3,345,092

**RESPONDENT ROUST TRADING LIMITED'S  
MOTION FOR SUSPENSION OF PROCEEDINGS**

Roust Trading Limited ("Respondent" or "Roust"), pursuant to Trademark Rule 2.117(a), 37 C.F.R. § 2.117(a), hereby moves for suspension of this Cancellation Proceeding filed by Spirits International B.V. and S.P.I. Spirits (Cyprus) Limited ("Petitioners" or "SPI") pending final disposition of an ongoing Federal District Court action between the same parties: *Russian Standard Vodka (USA), Inc., and Roust Trading Limited v. Allied Domecq Spirits & Wine USA, Inc., Pernod Ricard USA, LLC, S.P.I. Group SA, and S.P.I. Spirits (Cyprus) Limited*, No. 06-Civ. 9915 (S.D.N.Y. filed Oct. 18, 2006) (the "Federal Proceeding").

Under Rule 2.117(a), the Trademark Trial and Appeal Board ("TTAB") may suspend proceedings "whenever it shall come to the [Board's] attention that . . . parties to a pending case are engaged in a civil action . . . which may have a bearing on the case." 37 C.F.R. § 2.117(a). Generally, the Board will suspend a proceeding where the final determination of the civil proceeding will have a bearing on the issues before the Board. This is both to conserve Board resources and because a Federal District Court determination is binding on the Board, while Board decisions are not binding on a Federal District Court. *See generally* TBMP § 510.02(a).

As an initial matter, on January 31, 2008, the Deputy Commissioner for Trademarks upheld the Board's decision to suspend Cancellation No. 92047125 – an action that was between the same parties and that was based on the same pending Federal Proceeding (“Prior Cancellation Action”) (attached as Exhibit A see Board's Suspension Order dated July 27, 2007 and attached as Exhibit B see Director's Decision dated January 31, 2008 upholding the Board's Order). In that action, Petitioners filed to cancel one of Respondent's marks, partly based on Respondent's use of the term RUSSIAN STANDARD in the design of the mark. As with the previous action, the outcomes of both the instant Cancellation Proceeding and the Federal Proceeding depend, in part, on a determination of the meaning of the word “Russian” as applied to vodka. In the present Cancellation Proceeding, Petitioners contend that the trademark RUSSIAN STANDARD (“Respondent's Mark”) is (1) deceptive under Section 2(a) of the Lanham Act because “Russian Standard” indicates a particular official standard for vodka in Russia, (Pet. for Canc'l., Count I ¶ 1-4) (2) “Russian” signifies only that a product “originates” in Russia, and therefore is primarily geographically descriptive and hence unregistrable, (Pet. for Canc'l., Count II ¶¶ 7-11) and (3) the word “Standard” and the phrase “Russian Standard” are both laudatory and merely descriptive because the word and phrase represents a standard for vodka originating in Russia (Pet. for Canc'l., Count III ¶¶ 14-17).

In the Federal Proceeding, the meaning of “Russian,” as applied to vodka, is a central issue of the case. In its First Amended Complaint in the Federal Proceeding (attached as Exhibit C see First Amended Complaint less exhibits), Roust has relied on the fact that SPI's Stolichnaya vodka, although extensively advertised as “Genuine Russian Vodka” (First Am. Compl. ¶ 40) is not sold in Russia, not exported from Russia, not entirely produced in Russia, and therefore not

Russian vodka. (First Am. Compl. ¶¶ 21-25.)<sup>1</sup> The eventual ruling of the United States District Court for the Southern District of New York in the Federal Proceeding will likely be dispositive of at least Counts I, II, and III of the Petition for Cancellation in the instant proceeding and therefore, the Board should suspend Cancellation No. 92050154.

The Federal Proceeding involves a finding of the meaning of “Russian” as it relates to vodka sold in the United States. (First Am. Compl. ¶¶ 56, 82, 85-88.) The District Court may consider, *inter alia*, the following to determine if vodka can be labeled “Russian” under U.S. law: whether all or part of the vodka production process must be conducted in Russia, whether the vodka must be exported directly from Russia, whether the vodka must be for sale in Russia, and whether the vodka must be produced entirely with Russian ingredients or in accordance with specific standards imposed by the Russian government. If, for example, the District Court determines that to be labeled “Russian” in the United States a vodka must be made in accordance with specific standards imposed by the Russian government, then the term “Russian” is not primarily geographically descriptive as SPI alleges that it is in the present proceeding and the federal court’s determination will be dispositive of at least part of the claims asserted in this proceeding. (Pet. for Canc., Count II ¶¶ 7-11.)

Moreover, in a separate proceeding pending before the Board, *Spirits Int’l N.V. v. Russian Fed’n Treasury Enter. Sojuzplodoimport*, TTAB Opposition No. 91167196 (filed on Oct. 26, 2005), SPI moved to suspend proceedings pending disposition of a civil action then pending before the Southern District of New York.<sup>2</sup> As in the present matter, SPI alleged in that

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<sup>1</sup> A motion to amend the complaint is pending in the Federal Proceeding. The proposed Second Amended Complaint is not materially different from the First Amended Complaint.

<sup>2</sup> *Federal Treasury Enter. Sojuzplodoimport, et al. v. Spirits Int’l N.V., et. al.*, Civil Action No. 04-08510 (GBD) (S.D.N.Y. filed Oct. 28, 2004).

proceeding that a certification mark for RUSSIAN VODKA should not register, *inter alia*, because of questions regarding the significance of the word “Russian” to describe vodka. (*Spirits Int’l N.V.*, Notice of Opp. ¶¶ 13-22.) Given that the Board granted SPI’s Motion for Suspension of Proceedings in that prior TTAB proceeding, SPI should not have had any objection to the suspension in the Prior Cancellation Action, yet not only did they oppose Roust’s motion, they attempted to reverse the Board’s Suspension Order. Not only did Petitioners fail then, but any future attempts to oppose suspensions on the same basis, will indisputably be transparent gamesmanship that should not be tolerated by the Board.

SPI filed the Prior Cancellation Action less than one month after SPI was served and became a party to the Federal Proceeding. As stated above, the Board suspended that action. SPI’s attempt to reverse the Board’s decision failed. Then, less than 10 months after the Director’s Decision and with the same Federal Proceeding still pending, SPI filed the instant Cancellation Action and, remarkably, yet another TTAB Opposition Proceeding against Respondent’s newly filed label mark (Opposition No. 91187346).<sup>3</sup> It is evident that SPI is using the TTAB process as a mere pawn in its game of retaliation and harassment against Respondent. Accordingly, and for the reasons set forth above, Roust respectfully requests that all proceedings in the present matter be suspended pending final determination of the pending, prior Federal Proceeding pursuant to TBMP § 510.02(a).

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<sup>3</sup> *Spirits International B.V. and S.P.I. Spirits (Cyprus) Limited v. Roust Trading Limited*, Opposition No. 91187346 (filed on Nov. 5, 2008).

Respectfully submitted,

Dated: this 7<sup>th</sup> day of January, 2009

By: 

Timothy P. Fraelich  
JONES DAY

North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
Telephone: (216) 586-1247  
Facsimile: (216) 579-0212

Respectfully submitted,

Dated: this 7<sup>th</sup> day of January, 2009

By: 

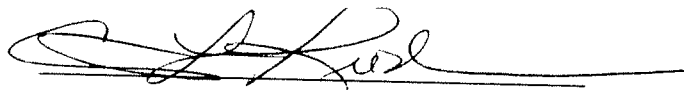
Carrie L. Kiedrowski  
JONES DAY

1420 Peachtree Street  
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Telephone: (404) 581-8620  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Respondent Roust Trading Limited's Motion for Suspension of Proceedings was served on this 7<sup>th</sup> day of January, 2009 via regular mail upon:

Marie A. Lavalleye  
COVINGTON & BURLING LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004-2401  
Telephone (202) 662-5188  
Facsimile (202) 778-5188

A handwritten signature in black ink, appearing to read 'Marie A. Lavalleye', written over a horizontal line.

Attorney for Respondent

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: July 27, 2007

Cancellation No. 92047125

Spirits International N.V. and  
S.P.I. Spirits (Cyprus)  
Limited

v.

Roust Trading Limited

Cheryl Goodman, Interlocutory Attorney:

This case now comes before the Board for consideration of respondent's motion, filed April 5, 2007, to suspend proceedings pending the disposition of a civil action involving the parties.<sup>1</sup> Petitioner has filed a brief in opposition thereto.

Respondent has argued that the parties' civil action will have a bearing on the Board action (in particular Counts III, VI, and VII of the petition to cancel) because the civil action will involve a determination by the court of the meaning of the word Russian as applied to Vodka.

In response, petitioner argues that the motion to suspend should not be considered as it is not germane to petitioner's motion for summary judgment, or alternatively, the motion to suspend should be denied because petitioner's

motion for summary judgment is "ready for decision in Petitioner's favor"<sup>2</sup> and the federal action will not have a bearing on the issues raised in petitioner's motion for summary judgment.

Proceedings before the Board may be suspended until final determination of a civil action involving the parties. See Trademark Rule 2.117(a); and *General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933 (TTAB 1992). Suspension of a Board case is appropriate even if the civil case may not be dispositive of the Board case, so long as the ruling may have a bearing on the rights of the parties in the Board case. See *Martin Beverage Co. Inc. v. Colita Beverage Company*, 169 USPQ 568, 570 (TTAB 1971). Moreover, to the extent that a civil action in a Federal district court involves issues in common with those in a proceeding before the Board, the decision of the Federal district court is binding upon the Board, while the decision of the Board is not binding upon the court. See, for example, *Goya Foods Inc. v. Tropicana Products Inc.*, 846 F.2d 848, 6 USPQ2d 1950 (2d Cir.1988).

Upon consideration of the parties' arguments and review of the civil complaint in the district court action, the Board finds that the civil action may have a bearing on the

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<sup>1</sup> *Russian Standard Vodka (USA), Inc. and Roust Trading Limited v. Allied Donrecq Spirits & Wine USA, Inc., Pernod Ricard USA, LLC. S.P.I. Group SA and S.P.I. Spirits (Cyprus) Limited*, No. 06-Civ.

<sup>2</sup> A response to the motion for summary judgment was due on April 4, 2005. It is noted that respondent did not file a response thereto.

issues in this proceeding. To the extent that petitioner argues that suspension should be denied because the district court decision may not address issues raised in its motion for summary judgment, the Board finds this argument unpersuasive. The Board must take into consideration whether the issues in common in the civil litigation will have a bearing on the Board proceeding, not whether the issues in common in the civil litigation will have a bearing on a pending motion.

Lastly, to the extent that petitioner is arguing that its motion for summary judgment should be decided before the question of suspension is considered, the Board finds that this is not a situation where respondent filed a civil action to escape the motion. In this case, the civil action was filed in December 2006, prior to the filing of the petition to cancel. Thus, the Board finds, in its discretion, that it is appropriate to defer consideration of the motion for summary judgment.

In view of the foregoing, and in the interest of judicial economy and to avoid duplicating the effort of the court and the possibility of reaching an inconsistent conclusion, respondent's motion to suspend is granted.

Proceedings herein are suspended pending final disposition of the civil action involving the parties.

Within twenty days after the final determination of the civil action, the interested party should notify the Board so that this case may be called up for appropriate action.

Cancellation No. 92047125

During the suspension period the Board should be notified of any address changes for the parties or their attorneys.



Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451  
www.uspto.gov

Spirits International B.V. and S.P.I. Spirits (Cyprus) Limited

v.

Roust Trading Limited

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Cancellation No. 92047125  
On Petition to the Director

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Decision

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Spirits International B.V. and S.P.I. Spirits (Cyprus) Limited (petitioners), petitioners in the above-referenced cancellation proceeding, have petitioned the Director to reverse an order by the Trademark Trial and Appeal Board (Board), dated July 27, 2007, suspending the proceeding pending the outcome of a federal court action involving the parties. The Director has authority to review the petition under Trademark Rule 2.146(a)(3), 37 C.F.R. §2.146(a)(3). The petition is denied.

## FACTS

This proceeding has an extensive factual and procedural history that began on February 20, 2007, when petitioners filed a Petition for Cancellation with the Board in connection with Roust Trading Limited's (respondent) RUSSIAN STANDARD & Design mark, Reg. No. 2,561,253 (the "Russian Standard Mark"). Since the institution of the cancellation proceeding, numerous motions, replies and oppositions to motions, and Board orders have been filed. Relevant to this petition are: (1) petitioners' motion for summary judgment and for suspension of further proceedings, filed on February 28, 2007; and respondent's motion for suspension pending disposition of a federal district court action, filed on April 5, 2007.<sup>1</sup>

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<sup>1</sup> The ongoing federal district court case is Russian Standard Vodka (USA), Inc. and Roust Trading Limited v. Allied Domecq Spirits & Wine USA, Inc., Pernod Ricard USA, LLC, S.P.I. Group SA, and S.P.I. Spirits (Cyprus) Limited, No. 06-Civ. 9915 (S.D.N.Y., filed December 4, 2006) (the "Federal proceeding").

In an order dated July 27, 2007, the Board granted respondent's motion to suspend the cancellation proceeding pending the disposition of the Federal proceeding, finding that suspension of a Board case is appropriate, even if the civil case may not be dispositive of the Board case, so long as the ruling may have a bearing on the rights of the parties in the Board case. (suspension order at p. 2). This petition followed.<sup>2</sup>

## ANALYSIS

Petitioners argue the Board erred in granting respondent's motion to suspend the cancellation proceeding because respondent's motion is not relevant to petitioners' prior-filed motion for summary judgment. (petition at p. 7). Petitioners specifically allege that respondent's motion to suspend is based solely on the claim that "outcomes of both this cancellation proceeding and the Federal proceeding depend, in part, on a determination of the meaning of the word 'Russian' as applied to vodka." (petition at p. 6). Petitioners counter that their motion for summary judgment "is based solely on the fact that the [Russian Standard Mark] is registered for rum, gin, brandy, wine and liqueur," and the Federal proceeding is not germane to this specific issue. Petitioners therefore argue that respondent's motion to suspend the proceedings should be denied, and the motion for summary judgment should be decided by the Board as it addresses issues not relevant to the Federal proceeding.

Pursuant to 35 U.S.C. §2 and 37 C.F.R. §2.146(a)(3), the Director may invoke supervisory authority in appropriate circumstances. However, the Director will vacate an interlocutory order issued by the Board in an inter partes proceeding only upon a showing of clear error or abuse of discretion. *In re Societe Des Produits Nestle S.A.*, 17 USPQ2d 1093 (Comm'r Pats. 1990); *Riko Enterprises, Inc. v. Lindsley*, 198 USPQ 480 (Comm'r Pats. 1977).

37 C.F.R. §2.117(a) provides: "Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding." Accordingly, since the Board has the authority to suspend proceedings before it, the only issue on petition is whether the Board has abused its discretion in suspending the cancellation proceeding. For the reasons set forth below, the circumstances presented in this case do not show that the Board abused its discretion.

In its July 27, 2007 order, the Board addressed petitioners' objection to the suspension of the cancellation proceeding because the Federal court decision may not address issues raised in its summary judgment motion, concluding that "the Board must take into consideration whether the issues in common in the civil litigation will have a bearing on the Board proceeding, not whether the issues in common in the civil litigation will have bearing on a pending motion." (suspension order at p. 3). The Board also addressed petitioners' objection to the timing of respondent's motion for

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<sup>2</sup> Respondent filed a Response to Petitioners' Petition to the Director with the Board on September 14, 2007, arguing in favor of the continued suspension of the cancellation proceeding pending the disposition of the Federal proceeding.

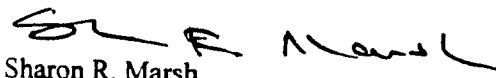
suspension, which was filed after petitioners' motion for summary judgment. On this point, the Board noted that since the Federal proceeding was filed prior to petitioners' motion, respondent was not merely attempting to escape petitioners' motion by a later-instituted federal action.

The Director also notes that respondent's complaint in the Federal proceeding includes the following broadly worded request for relief: "declaring that Russian Standard's conduct and statements as set forth hereinabove do not violate 15 U.S.C. §§1051, et seq." (First Amended Complaint, p. 25). Section 1051 addresses the general requirements for an application for registration under the Trademark Act, including verification of the goods on or in connection with which a mark is used or intended to be used and the dates of first use of the mark anywhere and in commerce. Accordingly, the Federal proceeding may have bearing on the specific issues petitioners have identified as critical to their summary judgment motion, i.e., the registration of the Russian Standard Mark for goods included in the underlying application.

It is further noted that Rule 2.117(b), upon which petitioners rely as support for their contention that their summary judgment motion should be immediately decided, references the Board's discretionary authority in that regard. Rule 2.117(b) reads, in part: "the potentially dispositive motion *may* be decided before the question of suspension is considered regardless of the order in which the motions are filed." (emphasis added). Inherent in this wording is the Board's authority to conclude that a potentially dispositive motion should not be decided, and instead that the case should be suspended. Following a review of the civil complaint in the federal district court action, and upon consideration of the parties' arguments, the Board indicates it concluded that it was appropriate to defer consideration of petitioners' summary judgment motion and suspend the proceeding. (suspension order at p. 3). The Board did not abuse its discretion in this determination.

#### DECISION

The petition is denied. The Board will be notified that the suspension of the cancellation proceeding is upheld.



Sharon R. Marsh  
Deputy Commissioner  
for Trademark Examination Policy

SRM:MGP

Date: JAN 31 2008

Counsel for Petitioners:  
Bingham B. Leverich, Esq.  
Covington & Burling LLP

1201 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2401

Counsel for Respondent:  
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Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114-1190

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**RUSSIAN STANDARD VODKA (USA),  
INC., and ROUST TRADING LIMITED**

**Plaintiffs,**

**vs.**

**ALLIED DOMEQ SPIRITS & WINE  
USA, INC., PERNOD RICARD USA,  
LLC, S.P.I. GROUP SA, and S.P.I.  
SPIRITS (CYPRUS) LIMITED**

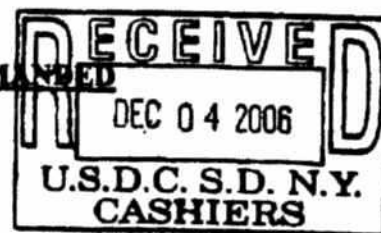
**Defendants.**

06 Civ. 9915 (RLC) (GWG)

ECF Case

**FIRST AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**



Plaintiffs Russian Standard Vodka (USA), Inc. ("RSV-US") and Roust Trading Limited ("RTL"), (collectively, "Russian Standard") submit their First Amended Complaint against defendants Allied Domecq Spirits & Wine USA, Inc. and Pernod Ricard USA, LLC and add as defendants to this action S.P.I. Group SA, and S.P.I. Spirits (Cyprus) Limited (all Defendants referred to herein jointly as "Defendants"). Russian Standard seeks a declaratory judgment from the Court that certain statements it has made and desires to make challenging the allegedly "Russian" character of Defendants' Stolichnaya vodka products do not violate the Lanham Act or state law (Count One). Russian Standard further asserts claims against Defendants for false advertising, false designation of origin, deceptive trade practices, unfair competition and unjust enrichment (Counts Two through Seven).

For its First Amended Complaint against Defendants, Russian Standard more particularly alleges as follows:

## **THE PARTIES**

1. Plaintiff Russian Standard Vodka (USA), Inc. is a corporation organized under the laws of Delaware, with its principal place of business at 1001 Avenue of the Americas, Suite 1108, New York, New York 10018.

2. Plaintiff Roust Trading Limited is a corporation organized under the laws of Bermuda, with its principal place of business at Milner House, 18 Parliament Street, Hamilton HM12, Bermuda.

3. Upon information and belief, defendant Allied Domecq Spirits & Wine USA, Inc. ("Allied Domecq") is a corporation organized under the laws of Michigan and maintains a business office at 355 Riverside Avenue, Westport, Connecticut 06880.

4. Upon information and belief, defendant Pernod Ricard USA, LLC ("Pernod Ricard") is a limited liability company organized under the laws of Indiana and maintains a business office at 777 Westchester Avenue, White Plains, New York 10604. Upon information and belief, defendant Pernod Ricard may have moved its business office to 100 Manhattanville Road, Purchase, New York 10577.

5. Upon information and belief, defendant S.P.I. Group SA ("SPI Group") is a corporation organized under the laws of Switzerland and maintains a business office at Place de la Fusterie 12, Geneve, GE 1204, Switzerland.

6. Upon information and belief, defendant S.P.I. Spirits (Cyprus) Limited ("SPI Cyprus") is a corporation organized under the laws of Cyprus and maintains a business office at 249 Lafiti Business Ctr, 28th October Street, 3rd Fl, Limassol, 3035 Cyprus.

## **JURISDICTION AND VENUE**

7. This action involves certain federal statutory questions and claims arising under the laws of the United States. This Court has original and supplemental jurisdiction without regard to the amount in controversy pursuant to 28 U.S.C. §§ 1331, 1338 and 1367 and 15 U.S.C. §1121.

8. Defendants are subject to this Court's personal jurisdiction in that they transact business within the State of New York and this District, manufacture goods sold in the State of New York and this District, have a principal place of business located within the State of New York and this District, have committed the tortious acts specified herein within the State of New York and this District, and/or have committed tortious acts without the State of New York causing injury to persons or property within the State of New York and this District and either (a) regularly do or solicit business, or engage in other persistent course of conduct, or derive substantial revenue from goods used or consumed in the State of New York and this District or (b) expect or should reasonably expect their acts to have consequences in the State of New York and this District and derive substantial revenue from interstate or international commerce.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), and § 1391(c), because a Defendant resides in this District and because wrongful acts alleged herein have been committed in this District.

## **BACKGROUND**

10. Russian Standard markets and sells vodka products. Russian Standard's vodka products currently are sold in the United States under the IMPERIA and RUSSIAN STANDARD brands.

11. Russian Standard introduced its IMPERIA ultra-premium vodka product in the United States in September of 2005 in New York City in conjunction with a charity event at the Statue of Liberty that generated worldwide publicity.
12. Russian Standard's vodka is made in Russia from Russian ingredients and Russian water sources. Russian Standard's vodka products are distilled, filtered, bottled, labeled and sold in Russia, and are imported directly from Russia to the United States.
13. Russian Standard's current United States marketing campaign for IMPERIA emphasizes its Russian character, and pronounces that "Vodka is Russian." A true and correct copy of advertising for IMPERIA is attached as Exhibit A hereto.
14. Upon information and belief, defendants SPI Group and SPI Cyprus (jointly "SPI Defendants") manufacture and label or otherwise control, direct, authorize or approve the manufacture and labeling of Stolichnaya vodka products that are marketed, advertised, distributed and sold in interstate commerce throughout the United States, including within the State of New York and this District.
15. Upon information and belief, defendant Pernod Ricard is the marketer and distributor of Stolichnaya vodka products in the United States.
16. Upon information and belief, defendant Allied Domecq is the designated importer of Stolichnaya vodka products into the United States.
17. Upon information and belief, the SPI Defendants supply Stolichnaya products to defendants Pernod Ricard and Allied Domecq (jointly "Pernod Defendants") with the knowledge, expectation and intent that such products are and will be resold in interstate commerce to purchasers and ultimate consumers located within the State of New York and this District, as well as throughout the United States.

18. Upon information and belief, the Pernod Defendants market, advertise, distribute and sell products labeled Stolichnaya to purchasers and ultimate consumers in interstate commerce in the United States, including within the State of New York and this District.
19. Upon information and belief, the Pernod Defendants act for the benefit of, and with the knowledge and consent of, the SPI Defendants.
20. Russian Standard's vodka products are sold and directly compete with Defendants' Stolichnaya vodka products within the United States, including within the State of New York and this District.
21. A key component of the Pernod Defendants' current advertising, promotion and marketing of Stolichnaya in the United States is its alleged Russian character.
22. Defendants' Stolichnaya, in fact, has no affiliation with the Stolichnaya brand products sold within Russia.
23. Defendants, in fact, may not legally sell their Stolichnaya products in Russia.
24. Defendants, in fact, do not export spirits bearing the Stolichnaya name from Russia and are prohibited by the Russian government from doing so.
25. Essential processes in the production of Defendants' Stolichnaya sold in the United States are not conducted within Russia. At the very least, Defendants' Stolichnaya is filtered, bottled and labeled in a plant in Riga, Latvia and imported to the United States from Riga, Latvia. The composition of Defendants' Stolichnaya vodka is also changed in Latvia prior to bottling, labeling and export from Latvia to the United States.

### **DEFENDANTS' ACTIONS AGAINST RUSSIAN STANDARD**

26. Since launching its IMPERIA product in the United States in September 2005, Russian Standard has associated IMPERIA's quality with Russia's vodka-producing heritage. "Vodka is Russian" is the centerpiece of IMPERIA's advertising campaign.

27. In connection with the launch of IMPERIA in the United States, Russian Standard issued a press release dated September 7, 2005. The press release provided information about IMPERIA, and referred to it as "a truly authentic Russian vodka of the highest quality." A true and correct copy of the September 7, 2005 press release is attached as Exhibit B hereto.

28. On or about October 6, 2005, counsel for defendant Allied Domecq sent a letter: (1) alleging that Russian Standard's publicity campaign "implies, if not explicitly states, that Imperia is the only authentically Russian vodka available in the market;" (2) claiming that Defendants' Stolichnaya possessed "authentic Russian heritage;" and (3) threatening "to take steps to prevent misinformation being circulated by our competitors, or others." True and correct copies of the October 6, 2005 letter from counsel for Allied Domecq, as well as subsequent letters between counsel for Allied Domecq and counsel for Russian Standard, are attached as Exhibit C hereto.

29. In the wake of Allied Domecq's accusations, Russian Standard has disputed Allied Domecq's claim that Defendants' Stolichnaya is authentically Russian. Russian Standard has stated that Stolichnaya "is not truly a Russian vodka," and "is not authentically Russian," and that "[i]f Stolichnaya vodka comes from Latvia rather than Russia, then they should be honest about that. We think they should be proud of their Latvian heritage." A true and correct copy of an April 6, 2006 Russian Standard press release containing such statements is attached as Exhibit D hereto.

30. On April 7, 2006, a press release issued on behalf of the Pernod Ricard Group -- of which defendant Pernod Ricard is a member --stated that the Pernod Ricard Group intended to explore legal remedies with respect to Russian Standard's statements. A true and correct copy of the press release is attached as Exhibit E hereto.

31. Journalists and other third parties have also publicly questioned the allegedly Russian character of Defendants' Stolichnaya vodka. The Pernod Defendants have attempted to attribute those statements to Russian Standard. True and correct copies of these articles are attached as Exhibit F hereto.

32. The Pernod Defendants have also asserted that certain materials provided to Russian Standard distributors have questioned the allegedly Russian character of Defendants' Stolichnaya products. Those materials do not, in fact, mention Stolichnaya. True and correct copies of the distributor materials about which the Pernod Defendants have complained are attached as Exhibit G hereto.

33. The Pernod Defendants have taken issue with the above-referenced statements, have contended that such statements constituted advertising, and have demanded that Russian Standard cease public comment or advertising that raises issues as to the allegedly Russian character of Defendants' Stolichnaya. The Pernod Defendants also brought a private, non-binding challenge against Russian Standard before the National Advertising Division of the Better Business Bureau ("NAD") concerning the foregoing matters.

34. The above-mentioned statements, actions and threats of action by the Pernod Defendants have raised a real and actual controversy as to the ability of Russian Standard to challenge and comment upon the allegedly Russian character of Defendants' Stolichnaya products. The Pernod Defendants are improperly attempting to suppress a competitor's ability to

make the public aware of the differences between its own products and Defendants' Stolichnaya products, which do not possess attributes that Defendants advertise to the public in order to generate sales.

### **DEFENDANTS' DECEPTIVE ADVERTISING CAMPAIGN**

35. The Pernod Defendants do not advertise, explicitly disclose or otherwise make it publicly known on their websites or in their advertising that production processes for their Stolichnaya products occur outside of Russia including, at the very least, changes to the composition of ingredients, bottling, filtering and labeling in Latvia. Defendants do not disclose on their Stolichnaya products that production processes for those products occur outside of Russia including, at the very least, changes to the composition of ingredients, bottling, filtering and labeling in Latvia.

36. The Pernod Defendants do not advertise, explicitly disclose or otherwise make it publicly known on their websites or in their advertising that Defendants' Stolichnaya is not produced in Russia, may not be sold in Russia, and is not imported directly from Russia to the United States. Defendants do not disclose on their Stolichnaya products that Defendants' Stolichnaya is not produced in Russia, may not be sold in Russia, and is not imported directly from Russia to the United States.

37. The Pernod Defendants make multiple representations on websites and in advertising about their Stolichnaya products' allegedly Russian heritage, which are false or misleading to the public. True and correct copies of pertinent portions of the Pernod Defendants' Stolichnaya United States websites, as they appeared on October 17, 2006, are attached as Exhibit H hereto. Defendants make multiple representations on the products themselves about

their Stolichnaya products' allegedly Russian heritage, which are false or misleading to the public.

38. The Pernod Defendants' website, [www.stoli.com](http://www.stoli.com), states in multiple locations: "RATED WORLD'S BEST VODKA 2005 - SOMETHING THE RUSSIANS HAVE KNOWN FOR OVER 500 YEARS." This statement is false or misleading to the public.

39. The Pernod Defendants' website, [www.stoli.com](http://www.stoli.com), states that "Stolichnaya is Russian for 'Capital City,'" intentionally linking their products' name with Russia, which is false or misleading to the public.

40. The Pernod Defendants' website, [www.stoli.com](http://www.stoli.com), states in multiple locations: "Genuine Russian Vodka" and "Stolichnaya Russian Vodka" and connects the Stolichnaya name directly to "Genuine Russian Vodka," in such statements as "Stoli Genuine Russian Vodka announces Stoli Be Real Documentary." These statements are false or misleading to the public.

41. The Pernod Defendants' website, [www.stoli.com](http://www.stoli.com), states: "Russian vodka" and "the number-one genuine Russian vodka." These statements are false or misleading to the public.

42. The Pernod Defendants' website, [www.stoli.com](http://www.stoli.com), contains imagery of distinctly-Russian buildings and Russian historical information. These images and information are misleading to the public.

43. The Pernod Defendants state on their [www.stoli.com](http://www.stoli.com) website that "[i]n 1972, the Russian government selected Stoli to be the only vodka produced and bottled for export." This statement falsely represents or implies that Defendants' Stolichnaya is authorized by the Russian government, that the Russian government permits export of Defendants' Stolichnaya to the

exclusion of other vodkas, and that Defendants' Stolichnaya is produced and bottled in, and exported to the United States from, Russia. This statement is false or misleading to the public.

44. The Pernod Defendants' website, <http://www.stolibereal.com/index2.php>, states: "Russian Vodka" and "Genuine Russian Vodka." These statements are false or misleading to the public.

45. The Pernod Defendants' website, <http://www.stolibereal.com/products.php>, states: "As the proud presenter of BE REAL, Stolichnaya seeks to honor the genuine in all things. This certainly holds true for Stoli itself, the original family of authentic Russian vodkas. Made from the finest ingredients and created through a rigorous distillation process, Stolichnaya is the world's best-selling Russian vodka." These statements are false or misleading to the public.

46. On information and belief, in or around November of 2006, the Pernod Defendants commenced or authorized an outdoor advertising campaign in New York City and elsewhere in the United States, including San Francisco, California, that depicts a bottle of Defendants' Stolichnaya alongside the following statement:

"WE CALL IT VODKA  
RUSSIANS CALL IT  
STOLICHNAYA."

This outdoor advertising falsely states or implies, among other things, that Defendants' Stolichnaya is sold and consumed in Russia and is false or misleading to the public. True and correct copies of photographs of samples of the Pernod Defendants' outdoor advertisements in New York City are attached as Exhibit I hereto.

47. Defendants further associate their Stolichnaya with Russia on the products themselves. Defendants' Stolichnaya products display the phrases "genuine Russian vodka" at the top of their Stolichnaya products and "RUSSIAN VODKA" in large block characters at the

bottom of their Stolichnaya products. Defendants further use images of a distinctly Russian building on their Stolichnaya products. These statements and depictions are false or misleading to the public.

48. Defendants further represent on their Stolichnaya products that their Stolichnaya is "IMPORTED RUSSIAN VODKA," that "Stolichnaya is from Russia, the birthplace of great vodka," and that "'Stoli' is The Russian Phenomenon." These statements are false or misleading to the public.

49. Statements identical or similar to certain of the above representations appear in print and television advertising for Defendants' Stolichnaya products.

50. The Pernod Defendants' Stolichnaya websites, [www.stoli.com](http://www.stoli.com) and [www.stolibereal.com](http://www.stolibereal.com), outdoor advertising, print and television advertising, as well as Defendants' Stolichnaya products themselves, when viewed in their totality, attribute the quality of their Stolichnaya products directly to their purported Russian origin and authenticity. The totality is false and misleading to the public.

51. At all times relevant to this proceeding, Defendants have falsely and misleadingly labeled, marketed, advertised and sold their Stolichnaya products as "genuine Russian," and have falsely, deliberately and intentionally caused public association of their Stolichnaya products with Russia, with the quality of Russian vodka, and with the Stolichnaya vodka sold in Russia.

52. Upon information and belief, the SPI Defendants control the manufacture and labeling of Defendants' Stolichnaya products and the supply of such products to the Pernod Defendants; and know or should know that Defendants' conduct in connection with the manufacture, labeling, marketing, advertising and sale of Defendants' Stolichnaya products includes the making of the above-referenced false and misleading statements about Defendants'

Stolichnaya to purchasers and ultimate consumers located in New York, including this District, and elsewhere in the United States.

53. The SPI Defendants also aid, abet and contribute to the Pernod Defendants' false and misleading advertising within the State of New York and this District by their conduct as alleged hereinabove.

54. Defendants' statements and actions as described hereinabove are material and either have influenced or are likely to influence consumer purchasing decisions.

55. Defendants' direct and contributory actions as set forth hereinabove have caused a likelihood of confusion and actual confusion, have caused damage and injury to Russian Standard and the consuming public, and have caused and continue to threaten irreparable harm for which there is no adequate remedy at law and for which the principles of equity require that Defendants be enjoined from their unlawful activity.

56. Russian Standard has a real and pecuniary interest in the consequences of Defendants' unlawful conduct. Russian Standard markets and sells its products in direct competition with Defendants. Russian Standard's products and Defendants' competing Stolichnaya products are sold to purchasers and ultimate consumers within the United States, specifically including within the State of New York and this District. Moreover, unlike Defendants' Stolichnaya products, Russian Standard's products are authentically Russian and actually possess qualities that the Defendants falsely and misleadingly represent are possessed by their Stolichnaya products.

57. The statements and actions of Defendants as described hereinabove were made with the intent to deceive the public with false and misleading representations and/or have resulted in actual consumer deception.

58. Defendants' conduct as described hereinabove has been done knowingly, deliberately, intentionally, maliciously, fraudulently, willfully or recklessly and/or constitutes gross, wanton, or willful fraud or other morally culpable conduct to an extreme degree. Defendants' statements and actions as described hereinabove entitle Russian Standard to punitive damages and expenses of litigation, including, but not limited to, attorneys' fees.

### COUNT ONE

#### DECLARATORY JUDGMENT

59. Russian Standard repeats and realleges paragraphs 1 through 58 above as if fully rewritten herein.

60. Russian Standard seeks a declaration of its rights, pursuant to 28 U.S.C. § 2201 et. seq., that the statements made by or attributed to Russian Standard as set forth above do not violate provisions of the Lanham Act, 15 U.S.C. § 1125, or state law.

61. The Pernod Defendants have claimed that the statements made by or attributed to Russian Standard as set forth above constitute false advertising and/or unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125, or state law.

62. The statements made by or attributed to Russian Standard as set forth above do not violate the Lanham Act or state law.

63. Russian Standard desires to continue to make public comment concerning Defendants' advertising, and desires to advertise regarding the differences between Russian Standard's products and Defendants' Stolichnaya products. Although Russian Standard desires and is prepared to proceed, it has been brought into an adversarial conflict with the Pernod Defendants based on prior conduct which has caused real and reasonable apprehension.

64. A real and actual controversy presently exists between the parties hereto, which is justiciable in character and as to which each party possesses an interest in its resolution.

65. Unless and until Russian Standard's statements and actions are found to be permissible under applicable law, Russian Standard's ability to make the public aware of Defendants' misleading conduct and to engage in comparative advertising concerning the parties' respective products will be unnecessarily impaired and clouded, and Russian Standard will continue to be injured and damaged. Accordingly, Russian Standard seeks declaratory relief from this Court.

66. The controversy between Russian Standard and Defendants warrants relief declaring the rights of the parties pursuant to 28 U.S.C. § 2201, and declaring and finding that the statements as set forth hereinabove, and those similar, are not violative of the Lanham Act or state law.

## **COUNT TWO**

### **FALSE ADVERTISING IN VIOLATION OF 15 U.S.C. § 1125**

67. Russian Standard repeats and realleges paragraphs 1 through 66 above as if fully rewritten herein.

68. The Pernod Defendants make multiple representations on websites and in advertising about their Stolichnaya products' allegedly Russian heritage, which are false or misleading to the public. Defendants make multiple representations on the products themselves about their Stolichnaya products' allegedly Russian heritage, which are false or misleading to the public.

69. The Pernod Defendants' website, [www.stoli.com](http://www.stoli.com), states in multiple locations: "RATED WORLD'S BEST VODKA 2005 - SOMETHING THE RUSSIANS HAVE KNOWN FOR OVER 500 YEARS." This statement is false or misleading to the public.

70. The Pernod Defendants' website, [www.stoli.com](http://www.stoli.com), states that "Stolichnaya is Russian for 'Capital City,'" intentionally linking their products' name with Russia, which is false or misleading to the public.

71. The Pernod Defendants' website, [www.stoli.com](http://www.stoli.com), states in multiple locations: "Genuine Russian Vodka" and "Stolichnaya Russian Vodka" and connects the Stolichnaya name directly to "Genuine Russian Vodka," in such statements as "Stoli Genuine Russian Vodka announces Stoli Be Real Documentary." These statements are false or misleading to the public.

72. The Pernod Defendants' website, [www.stoli.com](http://www.stoli.com), states: "Russian vodka" and "the number-one genuine Russian vodka." These statements are false or misleading to the public.

73. The Pernod Defendants' website, [www.stoli.com](http://www.stoli.com), contains imagery of distinctly-Russian buildings and Russian historical information. These images and information are misleading to the public.

74. The Pernod Defendants state on their [www.stoli.com](http://www.stoli.com) website that "[i]n 1972, the Russian government selected Stoli to be the only vodka produced and bottled for export." This statement falsely represents or implies that Defendants' Stolichnaya is authorized by the Russian government, that the Russian government permits export of Defendants' Stolichnaya to the exclusion of other vodkas, and that Defendants' Stolichnaya is produced and bottled in, and exported to the United States from, Russia. This statement is false or misleading to the public.

75. The Pernod Defendants' website, <http://www.stolibereal.com/index2.php>, states: "Russian Vodka" and "Genuine Russian Vodka." These statements are false or misleading to the public.

76. The Pernod Defendants' website, <http://www.stolibereal.com/products.php>, states: "As the proud presenter of BE REAL, Stolichnaya seeks to honor the genuine in all things. This certainly holds true for Stoli itself, the original family of authentic Russian vodkas. Made from the finest ingredients and created through a rigorous distillation process, Stolichnaya is the world's best-selling Russian vodka." These statements are false or misleading to the public.

77. On information and belief, in or around November of 2006, the Pernod Defendants commenced or authorized an outdoor advertising campaign in New York City and elsewhere in the United States, including San Francisco, California, that depicts a bottle of Defendants' Stolichnaya alongside the following statement:

"WE CALL IT VODKA  
RUSSIANS CALL IT  
STOLICHNAYA."

This outdoor advertising falsely states or implies, among other things, that Defendants' Stolichnaya is sold and consumed in Russia and is false and misleading to the public. True and correct copies of photographs of samples of the Pernod Defendants' outdoor advertisements in New York City are attached as Exhibit I hereto.

78. Defendants further associate their Stolichnaya with Russia on the products themselves. Defendants' Stolichnaya products display the phrases "genuine Russian vodka" at the top of their Stolichnaya products and "RUSSIAN VODKA" in large block characters at the bottom of their Stolichnaya products. Defendants further use images of a distinctly Russian building on their Stolichnaya products. These statements and depictions are false or misleading to the public.

79. Defendants further represent on their Stolichnaya products that their Stolichnaya is "IMPORTED RUSSIAN VODKA," that "Stolichnaya is from Russia, the birthplace of great

vodka," and that "'Stoli' is The Russian Phenomenon." These statements are false or misleading to the public.

80. Statements identical or similar to certain of the above representations appear in print and television advertising for Defendants' Stolichnaya products.

81. The Pernod Defendants' Stolichnaya websites, [www.stoli.com](http://www.stoli.com) and [www.stolibereal.com](http://www.stolibereal.com), outdoor advertising, print and television advertising, as well as Defendants' Stolichnaya products themselves, when viewed in their totality, attribute the quality of their Stolichnaya products directly to their purported Russian origin and authenticity. The totality is false and misleading to the public.

82. At all times relevant to this proceeding, Defendants have falsely and misleadingly labeled, marketed, advertised and sold their Stolichnaya products as "genuine Russian," and have falsely, deliberately and intentionally caused public association of their Stolichnaya products with Russia, with the quality of Russian vodka, and with the Stolichnaya vodka sold in Russia.

83. Upon information and belief, the SPI Defendants control the manufacture and labeling of Defendants' Stolichnaya products and the supply of such products to the Pernod Defendants; and know or should know that Defendants' conduct in connection with the manufacture, labeling, marketing, advertising and sale of Defendants' Stolichnaya products includes the making of the above-referenced false and misleading statements about Defendants' Stolichnaya to purchasers and ultimate consumers located in New York, including this District, and elsewhere in the United States.

84. The SPI Defendants also aid, abet and contribute to the Pernod Defendants' false and misleading advertising within the State of New York and this District by their conduct as alleged hereinabove.

85. The Pernod Defendants do not advertise, explicitly disclose or otherwise make it publicly known on their websites or in their advertising that production processes for their Stolichnaya products occur outside of Russia including, at the very least, changes to the composition of ingredients, bottling, filtering and labeling in Latvia. Defendants do not disclose on their Stolichnaya products that production processes for those products occur outside of Russia including, at the very least, changes to the composition of ingredients, bottling, filtering and labeling in Latvia.

86. The Pernod Defendants do not advertise, explicitly disclose or otherwise make it publicly known on their websites or in their advertising that Defendants' Stolichnaya is not produced in Russia, may not be sold in Russia, and is not imported directly from Russia to the United States. Defendants do not disclose on their Stolichnaya products that Defendants' Stolichnaya is not produced in Russia, may not be sold in Russia, and is not imported directly from Russia to the United States.

87. Defendants' statements and actions as described hereinabove are material and either have influenced or are likely to influence consumer purchasing decisions.

88. Russian Standard has a real and pecuniary interest in the consequences of Defendants' unlawful conduct. Russian Standard markets and sells its products in direct competition with Defendants. Russian Standard's products and Defendants' competing Stolichnaya products are sold to purchasers and ultimate consumers within the United States, specifically including within the State of New York and this District. Moreover, unlike Defendants' Stolichnaya products, Russian Standard's products are authentically Russian and actually possess qualities that the Defendants falsely and misleadingly represent are possessed by their Stolichnaya products.

89. Defendants' direct and contributory actions in interstate commerce in commercial advertising and promotion as described hereinabove falsely and misleadingly advertise the nature, characteristics, qualities and/or geographic origin of their goods, and have injured and damaged and are likely to further injure and damage Russian Standard and the public in violation of 15 U.S.C. § 1125(a).

90. The statements and actions of Defendants as described hereinabove were made with the intent to deceive the public with false and misleading representations and/or have resulted in actual consumer deception.

91. Defendants' statements and actions as described hereinabove entitle Russian Standard to damages, Defendants' profits and costs of this action under 15 U.S.C. § 1117.

92. Defendants' statements and actions in commercial advertising and promotion, as described hereinabove, entitle Russian Standard to treble such profits and damages under 15 U.S.C. § 1117(b).

93. Defendants' actions in commercial advertising and promotion, as described hereinabove, are malicious, fraudulent, deliberate or willful, constitute an exceptional case and justify the award of attorney fees to Russian Standard under 15 U.S.C. § 1117.

### **COUNT THREE**

#### **FALSE DESIGNATION OF ORIGIN IN VIOLATION OF 15 U.S.C. § 1125**

94. Russian Standard repeats and realleges paragraphs 1 through 93 above as if fully rewritten herein.

95. Defendants have directly and contributorily affixed, applied, annexed, or used in interstate commerce in connection with the commercial advertising or promotion of their Stolichnaya products a false designation of origin or a false description of origin that misrepresents, or tends to falsely misrepresent, the nature, characteristics, qualities and/or

geographic origin of Defendants' Stolichnaya products in a deceptive manner so as to create a likelihood of confusion in violation of 15 U.S.C. § 1125(a).

96. The statements and actions of Defendants as described hereinabove were made with the intent to deceive the public with false and misleading representations and/or have resulted in actual consumer deception.

97. Defendants' statements and actions as described hereinabove entitle Russian Standard to damages, Defendants' profits and costs of this action under 15 U.S.C. § 1117.

98. Defendants' statements and actions in commercial advertising and promotion, as described hereinabove, entitle Russian Standard to treble such profits and damages under 15 U.S.C. § 1117(b).

99. Defendants' actions in commercial advertising and promotion, as described hereinabove, are malicious, fraudulent, deliberate or willful, constitute an exceptional case and justify the award of attorney fees to Russian Standard under 15 U.S.C. § 1117.

#### **COUNT FOUR**

##### **FALSE ADVERTISING UNDER NEW YORK LAW**

100. Russian Standard repeats and realleges paragraphs 1 through 99 above as if fully rewritten herein.

101. Defendants' direct and contributory actions in the labeling, advertising, marketing, promotion and sale of their Stolichnaya products described hereinabove are false or misleading, deceptive, and are directed at the general public and consumers of vodka, specifically including those within the State of New York and this District.

102. Defendants' Stolichnaya products have been, and continue to be, advertised and sold within the State of New York.

103. Defendants' false advertising, marketing and promotion described hereinabove intentionally, deliberately, willfully or knowingly deceives the public and consumers, confuses or is likely to confuse the public and consumers, and materially misleads reasonable consumers as to the nature, characteristics, qualities and/or geographic origin of their Stolichnaya products, specifically including consumers within the State of New York.

104. Consumers, specifically including those within the State of New York, have reasonably relied and/or are likely to reasonably rely upon these misrepresentations in making purchasing decisions, have been actually deceived and confused and are likely to continue to be actually deceived and confused, and have been injured and damaged and are likely to be further injured and damaged by Defendants' statements and actions described hereinabove in violation of New York General Business Law §§ 350 and 350-a.

105. Defendants' statements and actions described hereinabove were committed and are deemed to have been committed within the State of New York; are in bad faith; have injured and damaged Russian Standard and misappropriated its commercial goodwill; and will likely further injure and damage Russian Standard in violation of New York General Business Law § 350 and 350-a.

106. Defendants' statements and actions described hereinabove entitle Russian Standard to increased damages, reasonable attorneys' fees and injunctive relief under New York General Business Law § 350-e.

#### **COUNT FIVE**

#### **VIOLATION OF NEW YORK'S DECEPTIVE TRADE PRACTICES ACT**

107. Russian Standard repeats and realleges paragraphs 1 through 106 above as if fully rewritten herein.

108. Defendants' direct and contributory actions in the labeling, advertising, marketing, promotion and sale of their Stolichnaya products described hereinabove are false or misleading, deceptive, and are directed at the general public and consumers of vodka, specifically including those within the State of New York and this District.

109. Defendants' Stolichnaya products have been, and continue to be, advertised and sold within the State of New York.

110. Defendants' false and misleading advertising, marketing and promotion described hereinabove intentionally, deliberately, willfully or knowingly deceives the public and consumers, confuses or is likely to confuse the public and consumers, and materially misleads reasonable consumers as to the nature, characteristics, qualities and/or geographic origin of their Stolichnaya products, specifically including consumers within the State of New York.

111. Consumers, specifically including those within the State of New York, have reasonably relied and/or are likely to reasonably rely upon these misrepresentations in making purchasing decisions, have been actually deceived and confused and are likely to continue to be actually deceived and confused, and have been injured and damaged and are likely to be further injured and damaged by Defendants' statements and actions described hereinabove in violation of New York General Business Law §§ 349(a) and (h).

112. Defendants' statements and actions described hereinabove were committed and are deemed to have been committed within the State of New York; are in bad faith; have injured and damaged Russian Standard and misappropriated its commercial goodwill; and will likely further injure and damage Russian Standard in violation of New York General Business Law §§ 349(a) and (h).

113. Defendants' statements and actions described hereinabove entitle Russian Standard to increased damages, reasonable attorneys' fees and injunctive relief under New York General Business Law §§ 349(h).

### **COUNT SIX**

#### **UNFAIR COMPETITION**

114. Russian Standard repeats and realleges paragraphs 1 through 113 above as if fully rewritten herein.

115. Defendants' direct and contributory actions in the labeling, advertising, marketing, promotion and sale of their Stolichnaya products described hereinabove are false or misleading, deceptive, and are directed at the general public and consumers of vodka, specifically including those within the State of New York and this District.

116. Defendants' Stolichnaya products have been, and continue to be, advertised and sold within the State of New York.

117. Defendants' conduct has been done knowingly, intentionally, willfully or recklessly and/or constitutes gross, wanton, or willful fraud or other morally culpable conduct to an extreme degree, deceives the public and consumers, confuses or is likely to confuse the public and consumers, and materially misleads reasonable consumers as to the nature, characteristics, qualities and/or geographic origin of Defendants' Stolichnaya products.

118. Consumers, specifically including those within the State of New York, have reasonably relied and/or are likely to reasonably rely upon these misrepresentations in making purchasing decisions, have been actually deceived and confused and are likely to continue to be actually deceived and confused, and have been injured and damaged and are likely to be further injured and damaged by Defendants' statements and actions described hereinabove.

119. Defendants' statements and actions described hereinabove were committed and are deemed to have been committed within the State of New York; are in bad faith; have injured and damaged Russian Standard and misappropriated its commercial goodwill; and will likely further injure and damage Russian Standard, constituting unfair competition in the course of Defendants' business in violation of state law.

120. Defendants' statements and actions described hereinabove entitle Russian Standard to damages, attorneys' fees, costs, punitive damages and injunctive relief.

#### **COUNT SEVEN**

#### **UNJUST ENRICHMENT**

121. Russian Standard repeats and realleges paragraphs 1 through 120 above as if fully rewritten herein.

122. Defendants' direct and contributory actions in the labeling, advertising, marketing, promotion and sale of their Stolichnaya products described hereinabove have been conducted with the purpose and effect of deriving unjust benefit from deceiving and misleading the public as to the nature, character and origin of their Stolichnaya products.

123. Defendants' actions as described hereinabove have resulted in, and are likely to further result in, unjust enrichment and/or benefit of Defendants at the expense of Russian Standard, requiring restitution.

124. One or more Defendants are unjustly enriched, have injured and damaged and are likely to further injure and damage Russian Standard in violation of state law.

125. Defendants' statements and actions described hereinabove entitle Russian Standard to damages, Defendants' profits, attorneys' fees, costs, and injunctive relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Russian Standard requests that the Court grant relief against each Defendant as follows:

- (a) Entering judgment for Russian Standard and against Defendants on all Counts asserted herein;
  - (b) Declaring that Russian Standard's conduct and statements as set forth hereinabove do not violate 15 U.S.C. §§ 1051, et. seq. or state laws;
  - (c) Ordering preliminary and permanent injunctive relief enjoining Defendants, their employees and agents, from advertising, marketing and promoting their Stolichnaya products through the statements and conduct alleged hereinabove;
  - (d) Awarding actual, statutory, and compensatory damages as proven at trial;
  - (e) Awarding treble damages against Defendants for violation of 15 U.S.C. § 1125, as authorized by 15 U.S.C. § 1117;
  - (f) Requiring Defendants to disgorge and pay to Russian Standard all profits received as a result of their wrongful acts in connection with their false and misleading advertising;
  - (g) Awarding punitive damages;
  - (h) Awarding costs and expenses of litigation, including reasonable attorneys' fees;
- and
- (i) Such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Russian Standard hereby demands a trial by jury on all causes of action and/or issues so triable.

Dated: New York, New York  
December 4, 2006



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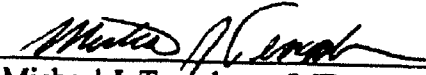
**CERTIFICATE OF SERVICE**

I hereby certify that on December 4, 2006, a copy of the foregoing FIRST AMENDED COMPLAINT and all exhibits annexed thereto was served on counsel for Defendants Allied Domecq Spirits & Wine USA, Inc. and Pernod Ricard USA, LLC by hand delivery and by overnight delivery service addressed as follows:

David H. Bernstein, Esq.  
Michael Schaper, Esq.  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022

Attorneys for Defendants  
Allied Domecq Spirits & Wine USA, Inc.  
and Pernod Ricard USA, LLC

Dated: New York, New York  
December 4, 2006

  
\_\_\_\_\_  
Michael J. Templeton (MT-8709),  
One of the attorneys for Plaintiffs  
Russian Standard Vodka (USA), Inc.  
and Roust Trading Limited